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**SAMANTHA LACHLER**

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

**YVETTE FELARCA, et al.,**

Plaintiffs,

v.

**ROBERT J. BIRGENEAU,  
et al.,**

Defendants.

Case Number: 11-CV-05719 YGR-DMR

**DEFENDANT SAMANTHA  
LACHLER'S BRIEF REGARDING  
ISSUE OF PLAINTIFFS'  
REPRESENTATION BY  
RONALD CRUZ**

Defendant Samantha Lachler hereby submits the following as ordered by  
this Court. (ECF No. 399.)

1 Defendant Lachler believes that California Rule of Professional Conduct  
2 5-210 (Rule 5-210) may apply to Mr. Cruz's continued representation of the  
3 plaintiffs in this case. Defendant Lachler reserves her right to call Mr. Cruz as a  
4 percipient witness. Should plaintiffs seek to introduce photographic or video  
5 evidence at trial demonstrating Mr. Cruz's participation in the events at issue in  
6 this litigation, Defendant Lachler may seek to call Mr. Cruz as a fact witness to  
7 provide testimony as to the actions and events depicted. Defendant Lachler will  
8 not question Mr. Cruz as a witness about any uncontested matter. (Rule 5-  
9 210(A).) Accordingly, Mr. Cruz must have the informed and written consent of  
10 each plaintiff. (Rule 5-210(C).)

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12 Mr. Cruz has long been aware that Defendant Lachler, and all other  
13 defendants, may seek testimony from him as a percipient witness. In the Joint  
14 Discovery Plan that the parties submitted to the Court on March 5, 2014 (ECF  
15 No. 204), defendants stated they may seek to depose Mr. Cruz as a fact witness,  
16 and plaintiffs stated they may object to defendants' noticing of Mr. Cruz's  
17 deposition.<sup>1</sup>

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19 Counsel for Defendant Lachler deposed all the plaintiffs in this action. In  
20 so doing, it became apparent that certain plaintiffs were surprised to learn of Mr.  
21 Cruz's presence at the protests of November 9, 2011. During the deposition of  
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1 plaintiff Christopher Anderson, on October 23, 2014, plaintiff Anderson was  
2 asked to identify individuals depicted in Exhibits 258, 267, and 268. (See,  
3 Exhibit A; Decl. of Russell M. Perry, ¶ 2.) In his response, plaintiff Anderson  
4 replied in part “I recognize Ronald. He’s right there. I didn’t know that.” (Exhibit  
5 A, p. 62: 3-4.) During the deposition of plaintiff Morgan Crawford, on September  
6 24, 2014, plaintiff Crawford was asked to identify individuals depicted in Exhibit  
7 245. (See, Exhibit B; Decl. of Russell M. Perry, ¶ 3.) In response, plaintiff  
8 Crawford identified Mr. Cruz, and stated he did not know that Mr. Cruz was  
9 present that day. (Exhibit B, p. 88: 2-14.)

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11 Defendant Lachler has not sought to use the advocate-witness rule to  
12 disqualify Mr. Cruz as counsel for Plaintiffs. Defendant Lachler, however, does  
13 share the Court’s concern about Mr. Cruz’s representation of plaintiffs should his  
14 involvement in the events at issue reach the jury. To be frank, plaintiffs’  
15 Memorandum of Points and Authorities in Support of the Motion for Summary  
16 Judgment demonstrates a completely inappropriate willingness to blur the line  
17 between plaintiffs’ specific legal and factual claims here with an envisioned  
18 “movement” unconnected to those legal and factual claims, a movement  
19 participated in by Mr. Cruz and his law firm. (ECF No. 391.) This includes  
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28 <sup>1</sup> Defendants in fact did not seek to depose Mr. Cruz.

1 finding it appropriate to insert an excerpt from an “op-ed” in the New York  
2 Times as evidence in support of plaintiffs’ claims. (ECF No. 301, p. 17-18.)  
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4 Specifically, Mr. Cruz and his law firm argue that the protestors of November 9,  
5 2011 “stood together” and “fought for each other” and “had each other’s backs”  
6  
7 against alleged unlawful use of force. (ECF No. 391, p. 2.) Now, such protestors  
8 are “inextricably bound together” in a “movement” which is “needed to win  
9 justice.” (ECF No. 391, p. 2.) This approach to legal advocacy, together with  
10 evidence depicting Mr. Cruz as one of the protestors and therefore “inextricably  
11 bound” with the plaintiffs and the “movement...needed to win justice,” will  
12 undoubtedly impermissibly compel the jurors to consider and weigh the  
13 credibility and integrity of Mr. Cruz as an advocate of this “movement,” rather  
14 than the admissible evidence and governing law alone. This has the potential to  
15 severely prejudice Defendant Lachler.  
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19 That aside, Defendant Lachler specifically reserves her right to contest  
20 any attorneys’ fees award sought by plaintiffs’ counsel at any later time. (*See*,  
21 *Rodriguez v. Disner*, (9th Cir. 2012) 688 F.3d 645, 654: a district court has broad  
22 discretion to deny fees to an attorney who commits ethical violations, and takes  
23 into consideration the extent, gravity, and willfulness of the unethical conduct.)  
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1 Dated: May 22, 2015

Respectfully submitted,

2 **RAINS LUCIA STERN, PC**

3 /s/ Russell M. Perry

4 Russell M. Perry, Esq.

5 Zachery A. Lopes, Esq.

6 Attorneys for Defendant Samantha Lachler